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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,306	04/20/2004	Shinsuke Fujiwara	4685	5680
21553	7590	07/06/2005		
			EXAMINER	
			KANG, DONGHEE	
			ART UNIT	PAPER NUMBER
			2811	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/829,306	FUJIWARA ET AL. <i>[Signature]</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Donghee Kang	2811	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 2,7-10,14 and 15 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-6 and 11-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 April 2004 is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
- 1.) Certified copies of the priority documents have been received.
  - 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/20/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 2, 7-10& 14-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06-24-05.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

3. Acknowledgment is made of receipt of applicant's Information Disclosure Statement (PTO-1449) filed April 20, 2004.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Duggan et al. (US 5,747,827).

Duggan et al. teach a light emitting device of a II-VI group compound semiconductor formed on a compound semiconductor substrate and having an active layer between an n-type cladding layer and a p-type cladding layer, comprising (Fig.7):

A semiconductor barrier layer (13) having a band gap larger than a band gap of said p-type cladding layer (4), provided between said active layer (2) and said p-type cladding layer. See also Col.4, lines 44-48.

6. Claims 1 & 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Domen et al. (US 6,555,403).

Domen et al. teach a light emitting device of a II-VI group compound semiconductor formed on a compound semiconductor substrate and having an active layer between an n-type cladding layer and a p-type cladding layer, comprising (Fig.38):

A semiconductor barrier layer (626) having a band gap larger than a band gap of said p-type cladding layer (619), provided between said active layer (616) and said p-type cladding layer, wherein thickness of said barrier layer is at least 5 nm and at most thickness of said active layer.. See also Col.1, lines 38-49.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 & 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asryan et al. (US 6,870,178) in view of Domen et al. (US 6,555,403).

Re claim 1, Asryan et al. teach a light emitting device having an active layer between an n-type cladding layer and a p-type cladding layer, comprising (Fig.8):

A semiconductor barrier layer (804) having a band gap larger than a band gap of said p-type cladding layer (122), provided between said active layer (112) and said p-type cladding layer. Ayryan et al. do not teach the emitting device made of a II-VI group compound semiconductor. Domen et al. teach II-VI group compound semiconductor is used for light emitting device (Col.1, lines 38-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the light emitting device using II-VI group material as taught by Domen since it is a known material well suited for blue light emitting device.

Re claim 3, Asryan et al. teach magnitude of the band gap of said barrier layer is larger by 0.05 eV than the band gap of said p-type cladding layer (See Table I on Col.13).

Re claim 4, Asryan et al. teach in the band gap of said barrier layer, energy of valence band is higher than that of said p-type cladding layer, and energy of conductive band is larger than that of said p-type cladding layer.

9. Claim 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domen et al. (US 6,555,403) in view of Kawazu et al. (5,539,239).

Re claim 5, Domen et al. do not teach said barrier layer containing Be. Domen et al. teach p-type barrier layer having such as Mg (Col.13, lines 35-38). Kawazu et al. teach Zn, Mg, or Be dopant species for p-type conductivity. Therefore, it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to use a Be as a dopant species since it is a known material well suited for the intended purpose.

Re claim 6, neither Domen nor Kawazu teaches said barrier layer is formed of ZnMgBeSe. It would have been obvious to one of ordinary skill in the art to form the barrier layer using ZnMgBeSe, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as matter of obvious design choice. In re Leshin, 125 USPQ 416.

10. Claims 1 &11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Migita et al. (US 5,299,217) in view of Domen et al. (Us 6,555,403).

Migita et al. teach in Fig.7 a light emitting device of a II-VI group compound semiconductor formed on a compound semiconductor substrate and having an active layer (22) between an n-type cladding layer (21) and a p-type cladding layer (23), wherein said p-type cladding layer is formed of ZnCdS. Migita et al. do not teach a barrier layer having a band gap larger than a band gap of said p-type cladding layer, provided between said active layer and said p-type cladding layer. Domen et al. teach the barrier layer 626 provided between said active layer (616) and said p-type cladding layer (619) to prevent the overflow of the carrier from the active layer to p-type cladding layer (Col.13, lines 35-38 & Fig.38). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Domen into the Migita' s device since the barrier layer prevents the overflow the

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electrons from the active layer to p-type cladding layer hence increasing light emission efficiency.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duggan et al. (US 5,747,827) in view of Iwata (US 5,475,700).

Duggan et al. teach n-GaAs substrate is used for substrate but n-ZnSe. Iwata teaches n-type GaAs, InP, GaP, ZnSe may be used for the semiconductor substrate for II-VI group compound semiconductor (Col.4, lines 8-12). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the n-GaAs of Duggan with n-ZnSe as taught by Iwata since GaAs and ZnSe are art recognized substrate material for II-VI group compound semiconductor.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donghee Kang whose telephone number is 571-272-1656. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Loke can be reached on 571-272-1657. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donghee Kang  
Primary Examiner  
Art Unit 2811

dhk